

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

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**HISPANIC FARMERS AND
RANCHERS OF AMERICA INC.**

Plaintiff,

NO. 11-CV-463 CEG/WPL
Judge:

Vs.

**DE BRUYN PRODUCE CO.
And MARGARET DE BRUYN**

Defendants.

**COMPLAINT FOR DAMAGES PURSANT TO THE PERISHABLE
AGRICULTURAL COMMODITIES ACT**

COMES NOW the Plaintiff, Hispanic Farmers and Ranchers of America,
hereinafter referred to (HFRA), by its Attorney of record Herman E. Ortiz, Attorney, and
for its complaint against the Defendants state as follows :

JURISDICTION AND VENUE

1. That the Plaintiff is a New Mexico Corporation with its primary place of
business located in the State of New Mexico and is a marketing organization for farmers
and growers engaged in the production and sale of perishable agricultural commodities in
interstate commerce.

2. Upon information and belief the Defendant DE BRUYN PRODUCE CO.
is a corporation with its principal place of business located in The state of

Texas and which operates warehouses and packing facilities for perishable commodities throughout the United States.

3. That the Defendant DEBRUYN PRODUCE CO. And MARGARET DEBRYUN are persons defined as perishable agricultural commodity commission merchants, dealers, and/or brokers pursuant to 7 U.S.C. 499(a).
4. That the individual Defendant Margaret DeBruyn is an officer, director, and/or an employee of the defendant DE BRUYN PRODUCE CO. MARGARET DEBRYUN , and at all times material hereto was a resident and a citizen of the state of Texas.
5. That jurisdiction is proper in this court pursuant to 7 U.S.C. 499(e)(b), 7 U.S.C. 499(e)(c)(4) and the doctrine of pendant jurisdiction.
6. That venue is proper in this Court.

COUNT I
VIOLATIONS OF PERISHABLE AGRICULTURAL COMMODITY ACT
CLAIM FOR ATTORNEY FEES

7. That the Plaintiff incorporates by reference paragraphs 1-6 as if fully set forth herein.
8. That during the 2010 crop year, the Plaintiff sold to Defendants pursuant to a written agreement, in interstate and foreign commerce in excess of 90,000 sacks of onions of various weights and quantities, a perishable agricultural commodity as defined by federal law.
9. That pursuant to the written agreement, the price per sack was to be set at the existing current market price for fresh market onion of the for the type of onion, fob/Santa Teresa, New Mexico. The grower was to be responsible for

payment of all freight, expenses to the U.S/Mexican Border, reasonable border crossing expenses, and U.S. import duties, if any. DeBryun was responsible for supplying grower with all shipping containers and point of origin tags. De Bryun was to be responsible for payment off all freight charges to final destination points and De Bruyn was required to account to HFRA for each individual shipment, and to provide timely payment. A true and correct copy of the contracts between the parties and all amendments are attached hereto as Exhibit 1. De Bruyn owed a legal and fiduciary obligation to obtain at a minimum the market price for the onions it sold. The United States Department of Agriculture establishes a market price for commodities on a daily basis which information is available to the public and to growers and businesses involved in the production and sale of perishable commodities.

10. That the HFRA fully complied with its obligations under the agreement.

11. That the Defendants breached the agreement in the following respects:

- A. Improperly taking adjustments from proceeds due HFRA in violation of the agreement signed by DeBruyn and in violation of the PACA and regulations issued pursuant to said Act.
- B. Failing to make prompt payment of amounts due pursuant to the agreement.
- C. Failing to properly account for individual shipments as required by the agreement and federal law.

D. Failing to obtain current market prices for the product or in the alternative, failure to make payment and remit proceeds to the HFRA received for the product.

E. The Plaintiff reserves the right to amend its complaint to allege further violations which may be revealed through the discovery process.

12. That by reason of the acts described above, the Defendant have violated the Perishable Agricultural Commodities Act and have engaged in unlawful conduct contrary to 7 U.S.C. 499(b)(4).

13. That pursuant to 7 U.S.C. 499 (e)(a), the Defendants are liable to the Plaintiff for the full amount of damages which are upon information and belief, in excess of \$300,000 including pre-judgment and post-judgment interest.

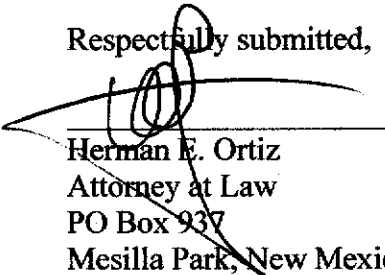
14. That pursuant to the Agricultural Commodities Act, the defendant should be ordered and compelled to produce an accounting of all proceeds received on the onion crop shipped by HFRA with supporting documents in accordance with generally accepted accounting principals.

15. That upon information and beliefs, the Defendants engaged in further illegal and unlawful conduct. That Defendant after receiving Plaintiff's crop which had point of origin labeling as being product from Mexico, Defendants proceeded to repack and relabel and distribute said commodities to various major chains in interstate commerce as part of a broader fraudulent scheme.

WHEREFORE, the Plaintiff prays under Count I as follows:

- A. For an order and judgment against the Defendants jointly and severally for compensatory damages in an amount to be proven at trial.
- B. For an order and judgment granting the Plaintiff an award of reasonable attorney fees and costs provided for under the Perishable Agricultural Commodities Act.
- C. For an order compelling a complete accounting to defendants of all proceeds and expenses.
- D. For such other and further relief that the Court deems just and proper.

Respectfully submitted,



Herman E. Ortiz
Attorney at Law
PO Box 937
Mesilla Park, New Mexico 88047
Tele: 575-541-6600

VERIFICATION

I Lupe Garcia, President of the Hispanic Farmers and Ranchers of America Inc., hereby declare under oath that the foregoing statements in the Complaint are true and correct to the best of my knowledge.

Lupe Garcia

Lupe Garcia

President, Hispanic Farmers and Ranchers of America Inc.

The foregoing verification of complaint was subscribed to and sworn to before me on this 31 day of May, 2011 by Lupe Garcia, as President of the Hispanic Farmers and Ranchers of America Inc.

Gabriela Ortiz

Notary Public

My commission expires: May 4th 2015



OFFICIAL SEAL
GABRIELA ORTIZ
NOTARY PUBLIC - STATE OF NEW MEXICO

My commission expires: 5/4/2015

COPY

Fax

Hispanic Farmers & Ranchers of America

Phone: 575-532-9099 or 575-644-6534

Fax: 575-532-5171

Date 10/15/09

Pgs. 4 including cover

To: **Margret De Bruyn**

De Bruyn Produce Co.

Fax: (956) 973-2505 *or 616-772-4242*

**Subject: HFRA & De Bruyn Produce Co. Contract 2009/2010
growing season**

Attached is our completed contract please read through it and let us know of what corrections or changes you would like to make. Please respond with your input on changes/corrections need to be made by email at Hispanicfr@peoplepc.com Thank You!

Have a good day!

Lupe

AGREEMENT BETWEEN Importer and Shipper (HFRA) and Marketer/Sales (De Bruyn Produce): for the growing of Onions in Chihuahua, Mexico by HFRA member growers

Agreement made 10/29/2009 (date), between Hispanic Farmers and Ranchers of America Inc., a corporation organized and existing under the laws of New Mexico [state], with its principal office located at 1065-D S. Main St. Suite B[address], Las Cruces [city], Dona Ana County, New Mexico [state], referred to in this agreement as Importer & Shipper & De Bruyn Produce of. PO Box 76 Zeeland, MI 49464 referred to in this agreement as Marketer/Sales.

Formal Explanation & Background of contract with Importer/Shipper & Grower

In consideration of the mutual covenants and promises set forth in the agreement of, Importer/shipper (HFRA) and Growers (Mexican Farmers) agreed as follows:

SECTION ONE.

TRANSPORTATION OF GOODS

For the consideration described in this agreement, Grower shall ship the following described goods from Delicias, Mexico [address] to Hispanic Farmers and Ranchers of America Inc. [name of consignee], consignee, at 1065-D S. Main St. Suite B, Las Cruces, N.M. 88005 [address]: Fresh Onions [goods to be shipped].

SECTION TWO

FORMAL EXPLANATION OF CONTRACT

The Contract for Growing and the sale of Fresh Onions is Between the Hispanic Farmers and Ranchers of America Inc., And Oscar M. Oaxaca Carrillo of Delicias in the State of Chihuahua Mexico & Luis Raul Avila Barrio of SD. Satevo Chihuahua Mexico. The purpose of this contract is for the growing of Fresh Onions for U.S. Markets. The Hispanic Farmers and Ranchers of America Inc will furnish the Onion Seed for 80 hectares of Yellow onion, 10 hectares of White onion, 15 hectares of Red onion to be grown in Hot Beds or Green Houses, until they are ready to be transplanted into the Fields in Delicias Area. As Stated above the Hispanic Farmers and Ranchers Of America Inc., will furnish the seed for the Marketable Crop to be grown and will deduct for the cost of the seed from the growers proceeds from the first shipment loads of Onions when sold and paid.

During germination and through the growing process there will be no use of any banded or non permitted pesticides, if such non permitted pesticides are used on the crop this contract will be null and voided and the Hispanic Farmers & Ranchers of America will not market the Fresh Onions grown for market and sale in the USA. The Delicias Farmers will pay for all fertilizer and pesticides cleared for use on Onions by the USDA.

The Delicias Farmers will grow the Onions and ship them through the Santa Teresa Port of Entry, which is located in Dona Ana County in the State of New Mexico. Onions will be transported in new graded Bags as to the order request of the buyer. The Hispanic Farmers & Ranchers of America will charge for the cost of importing, warehousing, unloading/reloading and for shipment of onions. The Delicias Farmers will pay all Trucking Costs acquired to the Santa Teresa Port of Entry in the USA. The Delicias Farmers will also be responsible for the Grading of Onions in the Delicias Area. When Onions are Graded and Bagged they will be stacked 40 Bags per pellet and wrapped tightly with Plastic Netting so that they are secured to pallet and ready for shipping. Prepared bagged, wrapped pellets will then be loaded by forklift and placed in cargo trailer properly so that they may be unloaded efficiently at the Santa Teresa Port of Entry in the USA. The Orders for Onions will be made to specification given by Lupe Garcia of (HFRA)

as to size and color.

The Hispanic Farmers and Ranchers will not be held Liable for any variation of sale in the U.S. Market for Onions. This contract will be legal and binding in the State of New Mexico in the USA and is agreed upon by the above representatives from each organization.

Section Three

FORMAL EXPLANATION OF CONTRACT: with Importer/ Shipper (HFRA) & Marketer/ Sales (De Bruyn Produce Co.)

Agreement of payment for Import & Processing Onions through US Port of Entry

De Bruyn Produce agrees to assist the Hispanic Farmers & Ranchers of America with the Marketing and Sale of Fresh Onions for the 2009/2010 growing season. Agreement starts once the Onion Loads cross over to the Us Port of entry and are cleared by USDA inspection and deemed stable for market, De Bruyn Produce agrees to the Market & Sale of the to be purchased Onions and at that time will advance \$4.50 per bag to the Hispanic Farmers & Ranchers of America Inc. The advance payment will be used to pay off costs for harvest, packing, and freight to the Santa Teresa Port of Entry in Dona Ana County, New Mexico. As well as for costs associated for the unloading and reloading of the Onion shipment, import fees and warehousing to be paid. After all associated costs are paid for HFRA will then pay and forward the Mexican farmers their portion after advance has been made between De Bruyn Produce and the Hispanic Farmers & Rancher of America Inc (HFRA.)

At Final Settlement De Bruyn produce will then charge \$0.50 cents per bag for the Sale of Onions. Advance & Final Settlement Payments will be made to the Hispanic Farmers & Ranchers of America Inc by Check/'s and mailed (Fed EX overnight) to 1065-D S. Main St. Suite B Las Cruces, NM 88005. At the time of Final Settlement De Bruyn Produce will also furnish a detailed Invoice listing all deductions taken and Purchase price obtained for each consecutive purchased load of Onions. This document may be faxed prior to 575-532-5171 HFRA FAX or shall be Fed Ex with final settlement payment to address listed above.

*changes up of 10/12/09
10% of Market price*

In witness whereof, the parties have executed this agreement at The Hispanic Farmers and Ranchers on America Inc. Office located in Las Cruces, New Mexico the date and year written below.

Hispanic Farmers and Ranchers of America Inc.
Representative:

Lupe Lufascia

Date Oct 29, 2009

De Bryun Produce Co.
Representative:

Margaret DeBruyn

Date 10/29/09

Hispanic Farmers and Ranchers of America, Inc.

1065-D S. Main St. Ste. B Las Cruces, NM 88005
Office (575)532-9099; FAX (575)532-5171; Cell (575)644-6534

Date 4-29-09

To Whom it May Concern,

The Member grower of the Hispanic Farmers and Ranchers of America Inc.

(Name) Oscar M. Ocasio Carrillo authorizes this association to collect funds received from the sale of produce or vegetables sold by the Hispanic Farmers and Ranchers of America Inc., on their behalf. The Hispanic Farmers and Ranchers of America holds a current Federal Tax ID number 75-2970882, all taxes and fees assessed in the sale and marketing of the vegetables (Produce) will be filled against this Federal Tax ID Number and will be reimbursed back to the association. All applicable fees will be deducted from net gross of sale and all remainder funds will then be forwarded back to the grower, by written corporate check of the Hispanic Farmers and Ranchers of America Inc. All marketing and sales of the vegetable (produce) will be made out of our office which is located at 1065-D S. Main St. Suite "B" Las Cruces, N.M. 88005. Our phone and Fax Numbers are as follows 575-532-9099(Office) 575-532-5171 (Fax) Email- hispanicfr@peoplepc.com . Any and all concerns will be forwarded to our office by appointment, phone call, fax or email. All Sales will receive its own personal invoice number and grower will receive a copy of sale invoices when all sales are final.

This is a binding and legal document and all persons named on this document agree to the terms above.

[Signature]
Signature of Member (Grower)

[Signature]
Signature of Hispanic Farmers and Ranchers
of America Representative

[Signature]
Witness of either (Grower or HFRA Rep)

